**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 392 OF 2006.**

Anant V.Chougule. ... Appellant.

Versus.

Mrs.Rutvi A.Chougule. ... Respondent.

Shri S.D.Patil for the Appellant.

Shri R.D.Syuryawanshi for the Respondent.

**CORAM : ABHAY S.OKA, J.**

**DATED : 27th MARCH, 2006.**

**P.C.:**

1. Admit. The Respondent waives service. Taken up for hearing forthwith as the dispute in the Appeal relates to the custody of minor child.

2. The Appellant is the husband and the Respondent is the wife. Their marriage was solemnised in accordance with the Hindu Vedic Rites on 23rd April 2004. The child was born on 8th March 2005. It is not in dispute that the child is handicapped since birth.

3. An application was filed by the Respondent for custody of the minor child. At that relevant time, the child was only 5 months old. It is an admitted position that during the pendency of the said application the Appellant consented to handing over of the custody of the minor child to the Respondent and as of today the child is in the custody of the Respondent.

4. The learned Advocate for the Appellant submitted that the custody of the child was handed over by the Appellant to the Respondent as the child was merely five months old. He submitted that the child is now one year old. He submitted that if this Court is not inclined to disturb the custody, the temporary custody may be granted in terms of order dated 25th August 2005 passed by the District Court below Application at Exh.11. He stated that the District Court during the pendency of the Application filed by the Respondent permitted the Appellant to have an access to the child once in a fortnight, but now as the child is one year old, he may be permitted to meet the child in terms of the said order once in a week.

5. The learned Advocate appearing for the Respondent submitted that considering the tender age of the child custody cannot be disturbed at this stage. On instructions of the Respondent, he stated that the interim arrangement made during the pendency of the Application in the trial Court may be continued provided the child is taken to the maternal uncle of the Appellant.

6. I have considered the submissions. The age of the child as of today is only one year. At such a

tender age, the custody of mother cannot be disturbed. Therefore, there is no reason to interfere with the impugned order to that extent.

7. However, the Appellant deserves to be granted visitation right as it is necessary that the child must know both his parents very intimately. There is substance in the submission of the learned Advocate for the Appellant that the visitation right deserves to be granted once in a week. The application at Exh.11 made by the Appellant before the trial Court does disclose that a prayer was made that access may be granted at the house of his Maternal Uncle one Shri Vikas Sawant at the address mentioned in the application.

8. In my view, considering the tender age of the child and considering the fact that he is handicapped, though the Appellant can be permitted to take child every Sunday at 10.00 a.m. from the house of the Respondent, he should take the child only to the house of his maternal uncle and bring back the child at 12.00 noon to the Respondents. At this stage the learned Advocate appearing for the Appellant submitted that for treating the handicap suffered by the child he proposes to consult a reputed Doctor who is stationed at Pune. The parties at their mutual convenience can take the child to the said Doctor. The parties may also works

out modalities of giving access to the Appellant to meet the minor child on the birth day and during Diwali festival.

9. Hence the Appeal is disposed of by the following order:

**O R D E R**

i) The impugned judgment and order in so far as it relates to the custody of the minor child is confirmed.

ii) The Appellant will be entitled to visit the residence of the Respondent on every Sunday at 10.00 a.m. and take the minor child along with him to the house of his maternal uncle Shri Vikas Sawant. The Appellant will bring back the child to the house of the Respondent by 12.00 noon.

iii) The Appellant will be entitled to meet the child on his birth day as well as during Diwali festival. The modalities of granting access on birth day and during Diwali festival will be worked out

by the parties as per their mutual convenience.

iv) The parties may fix the time by mutual convenience and take the child to Pune for consulting a Doctor as desired by the Appellant.

v) In case there is any difficulty in implementation of this order, the parties are at liberty to move the trial Court for appropriate directions.

vi) The Appeal is disposed in the above terms.

vii) The parties to act on an authenticated copy of the order.

**Judge.**